land in accordance with the terms of the agreement because clause 2 required that both parts of the original should be issued with separate documents of title in continuation. In order to comply with the agreement the sub-division had to take the form of an issue to the appellants of a title in perpetuity to the land comprised in the agreement and the issue to Shell of a title in perpetuity to the petrol filling site. This result could not be achieved. Nevertheless it is said that sub-division was still legally possible. Shell could have closed down the petrol filling station and would then not have been obliged to surrender their title in perpetuity for a thirty-year term.

By these arguments the appellants are seeking to impose on Shell new conditions which are inconsistent both with the spirit and the letter of the agreement. Shell would never have agreed to enter into a contract to sell part of the land to the appellants on terms that Shell would surrender their title in perpetuity for a thirty-year term or would close down the petrol filling station if either of these courses became necessary in order to obtain sub-division. The suggestion that there can be derived from the agreement some implied obligations on Shell to this effect or that the court should impose these obligations on Shell is in the opinion of their Lordships untenable.

Finally the appellants argued that the Collector and the State Commissioner had no power to withhold approval of the sub-division of the land; it was their duty to grant approval. They had no right to demand and were exceeding or abusing their powers in demanding that Shell should surrender their title in perpetuity and accept a thirty-year term. It is now clear that indeed the Government had no power to pursue a policy of insisting that a title in perpetuity to a petrol filling station should be surrendered in return for a thirty-year term. That appears from the decision of the Federal Court in *Pengarah Tanah Dan Galian, Wilayah Persekutuan* v. *Sri Lempah Enterprise*[1]. But there is nothing in the agreement dated December 29, 1972 which obliged Shell to do more than make the necessary application for sub-division. Their Lordships decline to imply in the agreement or to impose an obligation on the part of Shell to bring proceedings. Such an obligation whether express or implied would be thoroughly unreasonable.

In the result their Lordships agree with the Federal Court of Malaysia and will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Kingsford Dorman; Stephenson Harwood.*

SINGAPORE BUS SERVICE (1978) LIMITED v. LIM SOON YONG

[P.C. (Lord Keith of Kinkel, Lord Edmund-Davies, Lord Brandon of Oakbrook, Sir Owen Woodhouse & Sir Edward Eveleigh) July 15 & 29, 1985]

[Privy Council Appeal No. 21 of 1984]

Tort – Damages – Damages on behalf of dependants of deceased person – Loss attributable to cessation of contributions to Central Provident Fund – Whether forms part of dependency claim – Central Provident Fund Act, (Cap. 121), ss. 12(5), 15(2) & 16(1) – Civil Law Act, (Cap. 30), ss. 8 & 12.

Provident Fund – Fatal accident – Dependency – C.P.F. contribution of deceased forms part of dependency claim – Central Provident Fund Act (Cap. 121), ss. 12(5), 15(2) & 16(1).

The respondent the widow of one Kwan Yat Hong who was killed in a motor accident for which the appellants admitted liability brought an action against the appellants under section 12 of the Civil Law Act claiming damages on her own behalf and on behalf of the children and parents of the deceased. No claim was made on behalf of the estate under section 8 of the Act and such a claim eventually became statute-barred. In the statement of claim it was originally alleged that the dependants had suffered loss and damage amounting to $800 a month but this was amended to add the words "in addition to the CPF contributions." The Assistant Registrar assessed the general damages at $118,560 and indicated that $44,856 of that sum was in respect of the loss attributable to the cessation of contributions to the Central Provident Fund. The total figure for general damages was increased to $148,000 on appeal to the High Court and this assessment was upheld in the Court of Appeal ([1983] 2 M.L.J. 306). The amount attributable to the cessation of contributions to the Fund was not disturbed. The appellants appealed and contended that the loss resulting from the cessation of contributions to the Fund was a loss suffered by the deceased estate and as such should have been claimed under section 8 of the Civil Law Act. They said that the dependants have suffered no loss of dependency in relation to the contributions and the fact that they were nominated under section 16(1) of the Central Provident Fund Act did not entitle them to claim as dependants.

Held, dismissing the appeal: (1) on the facts of the case there could be no reasonable difference between the loss of the expectation of a greater sum from the Central Provident

Fund in consequence of additional contributions that would have been made and the loss of expectation under a will or intestacy resulting from additional savings;

(2) section 15 of the Central Provident Fund Act supports the respondents' claim to a reasonable expectation from the Fund.

Cases referred to:

(1) *Davies* v. *Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601, 611.

(2) *Nance* v. *British Columbia Electric Railway Co. Ltd.* [1951] A.C. 601, 614, 615, 617.

(3) *Gammell* v. *Wilson* [1982] A.C. 27.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Crawford Lindsay for the appellants.
Denis Murphy for the respondents.

Cur. Adv. Vult.

Sir Edward Eveleigh (delivering the Judgment of the Board): Section 12 of the Civil Law Act of Singapore makes provision for the recovery of damages on behalf of the dependants of a deceased person in terms which for the purpose of this appeal can be said to be very similar to those contained in the Fatal Accident Acts in England.

Section 8 of the Civil Law Act provides that a cause of action vested in a deceased shall survive for the benefit of his estate.

On May 26, 1979 Kwan Yat Hong was killed in a motor accident for which the appellants eventually admitted liability. On May 6, 1980 the respondent, the widow of the deceased, brought an action under section 12 of the Civil Law Act claiming damages on her own behalf and on behalf of the children and the parents of the deceased. No claim was made on behalf of the estate under section 8 and such a claim eventually became barred under the provisions of section 6 of the Limitation Act.

In the Statement of Claim as originally drafted it was alleged that the dependants had "suffered loss and damage amounting to $800 a month". The case came before the Assistant Registrar for the assessment of damages and before him the pleading was amended to add the words "in addition to the Central Provident Fund contributions". These were monthly contributions paid by the deceased and his employer under the Central Provident Fund Act. The Act and regulations and rules made thereunder laid down the conditions under which money standing to the credit of a member of the Fund could be withdrawn. Section 12(2) permitted the withdrawal if a member had attained the age of 55 years and provision was made for payment from the Fund on the death of a member. Section 16(1) read as follows:–

"Ang member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under subsection (1) of section 13 as the memorandum shall indicate."

Section 13 provided, *inter alia,* that a person nominated under section 16(1) should be paid such portion of the money standing to the credit of a member as that person had been nominated to receive. There were other circumstances in which money could be withdrawn but it is not necessary to recite them.

The deceased had nominated his wife and his parents and on their behalf it was submitted that as contributions to the Fund ceased to be made after his death the sum from which they stood to benefit was less than it would have been had he lived so that they suffered a loss of dependency in this respect.

The Assistant Registrar assessed the general damages at $118,560 and indicated that $44,856 of that sum was in respect of the loss attributable to the cessation of contributions to the Central Provident Fund. The total figure for general damages was increased to $148,000 on appeal to Abdul Wahab Ghows J. and his assessment was upheld in the Court of Appeal, but the amount attributable to the cessation of contributions to the Fund was not disturbed.

The appellants now contend, as they did below, that the loss resulting from the cessation of contributions to the Fund is a loss suffered by the deceased's estate and as such should have been claimed under section 8 of the Civil Law Act. They say that the dependants have suffered no loss of dependency in relation to the contributions and the fact that they were nominated under section 16(1) does not entitle them to claim as dependants.

Abdul Wahab Ghows J. gave no reasons for his decision in relation to the $44,856. The Court of Appeal however said:–

"We are unable to accept the contention of the appellants. Central Provident Fund contributions are not chargeable with estate duty. The money does not go to the estate of the contributor. In this case it goes to the widow and the

parents of the deceased. Had the deceased lived to the age of 55 he would have withdrawn the sum standing to his credit in the Central Provident Fund and the widow and children would necessarily have benefited from the deceased having this money if not for this accident. In our view, therefore, the Central Provident Fund contributions do form part of the widow's dependency claim."

The reference to contributions not being chargeable with estate duty is based upon section 15(2) of the Central Provident Fund Act which states:—

"All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of –

(a) the person or persons nominated under subsection (1) of section 16 by the deceased member (if any); or

(b) the person or persons determined by the Public Trustee in accordance with subsection (2) of section 16 to be entitled thereto,

but shall, without prejudice to the operation of the Estate Duty Act, be deemed not to form part of the deceased member's estate or to be subject to his debts."

The appellants submit that the Court of Appeal misconstrued the provisions of section 15 and misdirected itself in holding that if the deceased had lived to 55 years his widow and children would have benefited from the sum standing to the deceased's credit in the Central Provident Fund.

It has not been contended that the figure of $44,856 is wrong if in principle there was a loss of dependency in this case. Their Lordships are therefore not concerned with quantum but only whether on the facts of this case the cessation of contributions to the Fund could be taken into account in assessing the loss of dependency.

The principle upon which a claim for damages for loss of dependency is based has been clearly stated in *Davies* v. *Powell Duffryn Associated Collieries Ltd.*[1] At page 611 Lord Wright said:—

"The Act of 1846 section 2 provides that the action is to be for the benefit of the wife or other member of the family, and the jury (or judge) are to give such damages as may be thought proportioned to the injury resulting to such parties from the death. The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value."

The courts following this statement of principle have frequently awarded damages to compensate for loss going beyond that of daily maintenance. For example they have taken into account the value of services rendered to the dependants by the deceased and have compensated a dependant who had a reasonable expectation of benefiting under the will of the deceased for the fact that the value of the estate would have been greater if the deceased had lived longer and so been able to save more for his dependants.

In *Nance* v. *British Columbia Electric Railway Co. Ltd.*[2] at page 614 Viscount Simon delivering the judgment of the Board said:—

"The claim to damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family? (Under this head in the present case the wife or widow need alone be considered, since his children and step-children were all adults and self supporting, and at the time of his death he contributed nothing material to their maintenance). Secondly, in addition to any sum arrived at under the first head, the case has been argued on the assumption, common to both parties, that according to the law of British Columbia it would be proper to award a sum representing such portion of any additional savings which he would or might have accumulated during the period for which, but for his accident, he would have lived, as on his death at the end of this period would probably have accrued to his wife and family by devolution either on his intestacy or under his will, if he made a will."

At page 615 he said:—

"A figure having been arrived at under this first head, there should be added to it a figure arrived at under the second head. The question there is what additional amount he would probably have saved during the x years if he had so long endured, and what part, if any, of these additional savings his family would have been likely to inherit."

For the appellants it was submitted that in referring to savings Viscount Simon was dealing with the claim made on behalf of the estate and not with the claim for damages by the dependants. This, however, cannot be correct because at page 617 he said:—

"Whatever sum he would have saved over x years must again be reduced to its lump sum equivalent here and now, and further discounted to allow for the contingency that his wife might have died before him; though these reducing factors would have been to some extent offset by any interest carried by the savings annually set aside."

The reference to the wife dying first can only be relevant to an assessment of damages for loss of dependency.

On the facts of the present case their Lordships can see no material difference between the loss of the expectation of a greater sum payable from the

Fund in consequence of additional contributions that would have been made and the loss of expectation under a will or intestacy resulting from additional savings. The widow and the parents had an expectation that they would benefit personally from the Fund for section 12(5) of the Central Provident Fund Act provides:—

"After the death of a member of the Fund a person nominated by such member in accordance with subsection (1) of section 16 shall be entitled to withdraw such portion of the sum standing to the credit of such member in the Fund as is set out in the memorandum executed in accordance with that subsection."

Moreover section 16(1) specifically contemplates that the nominated person or persons will receive the money "in his or their own right".

The deceased would have continued to contribute and so would his employer if the accident had not occurred for payment was compulsory under the Act. Their Lordships are not concerned to determine for how much longer contributions would have been paid because they are not asked to deal with quantum. The evidence clearly shows that the deceased was a caring husband and son. The learned judge took that view for the figure awarded for general damages apart from the amount referable to the cessation of contributions was substantial. That figure, which is not challenged, involves a finding that the probability was that the deceased would have continued to work and inferentially therefore to contribute to the Fund for many years. Had he died before the age of 55 his dependants would have been entitled to their portions by virtue of section 12(5). The deceased might have lived beyond 55 and withdrawn the sum standing to his credit. In that event it is reasonable to infer that he would have used the money not only for his own benefit but for the benefit of his dependants. To the extent that he did not spend it he would have saved it and his dependants, particularly his widow who was younger than he was, would reasonably have expected to inherit from him.

The fact that the deceased's estate might have had a claim for the value of lost contributions to the Fund in no way affects the right of the dependants to claim for their own loss. The fact that, in England, before the Administration of Justice Act 1982 damages could be claimed by the estate for loss of the ability to earn over the "lost years" (see *Gammell* v. *Wilson*[3]) did not take away the right of dependants to claim for their loss of dependency. The claim by the estate might affect the valuation of the claim by the dependants to the extent that they benefited from the estate but the two claims are independently sustainable.

In their Lordships' opinion section 15 of the Central Provident Fund Act supports the respondents' claim to a reasonable expectation of a benefit from the Fund. There is no reason to think that the Court of Appeal misunderstood that section.

Their Lordships accordingly dismiss the appeal with costs.

Appeal dismissed

Solicitors: *Jaques & Lewis; Clyde & Co.*

QUEK LENG CHYE & ANOR. v. ATTORNEY GENERAL

[P.C. (Lord Scarman, Lord Diplock, Lord Keith of Kinkel Lord Brightman & Sir Owen Woodhouse) July 8, 9 & 31, 1985]

[Privy Council Appeal Nos. 59, 60, 61 and 62 of 1984]

Company Law – Directors – Disqualifications from directorship and management of companies – Offer to sell share – Non-compliance with requirements of Companies Act – Documents deemed to be prospectuses – Disqualification under s. 130 of Companies Act – Matters for consideration by the Court – Discretion – Companies Act (Cap. 185), ss. 4, 39(4), 43, 130 & 363(3).*

This was an appeal from the decision of the Court of Appeal of Singapore ([1985] 1 M.L.J. 97). The appellants and two others were convicted of an offence punishable under section 39(4) read with section 43 of the Companies Act, the substance of the offence being the unlawful issue of letters of invitation to the public to subscribe for shares in a company. The appellants applied to the High Court for orders pursuant to section 130 of the Companies Act that notwithstanding the conviction of each of them, each of them be at liberty to act as directors and promoters or to be otherwise directly or indirectly concerned or to take part in the management of companies in Singapore. The learned Chief Justice who heard the applications refused the applications for directorships but he granted the applicants leave to be concerned in and take part in the management of all but two of the companies of which they had been directors before their conviction. The two excepted companies were those that had been directly concerned in the setting up of the proposed country club for which the letters of invitation had been issued. The appellants appealed to the Court of Appeal and the Attorney-General too appealed against the grant by the Chief Justice of leave to be concerned and take part in the management of the various companies. The Court of Appeal allowed the appeal

* See now 1985 Reprint of the Companies Act (Cap. 185), ss. 4, 45(4), 52, 154 & 400(3).